

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEPHEN ALAN MACOMBER,

Defendant.

**8:10CR220**

**MEMORANDUM AND ORDER**

This matter is before the Court on the Defendant's pro se motion for stay of final judgment (Filing No. 78). The Court has considered the government's response (Filing No. 85).

The Defendant moves that the order dismissing his case without prejudice be stayed pending appeal for the reason that if the Eighth Circuit Court of Appeals reverses or remands the case he and the government would be spared significant expense.

The government opposes the motion, arguing that under 28 U.S.C. § 1292(c)(1) this Court lacks jurisdiction to decide the motion.

Federal Rule of Appellate Procedure 8(a) requires a motion to stay to initially be filed in the district court and under certain circumstances, including the denial of the motion in the district court, in the court of appeals.<sup>1</sup> The Eighth Circuit considers four factors in determining whether to stay a district court order pending appeal:

"(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially

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<sup>1</sup> Federal Rule of Appellate Procedure 8(c) also refers to Federal Rule of Criminal Procedure 38 regarding stays in criminal cases. However, Rule 38 governs stays of sentence or disability and has no application to the issue raised in this case.

injure the other parties interested in the proceeding; and (4) where the public interest lies.”

*Brady v. Nat'l Football League*, 640 F.3d 785, 789 (8<sup>th</sup> Cir. 2011) (quoting *Hilton v. Braunschweil*, 481 U.S. 770, 776 (1987)).

Macomber has not made any showing that he is likely to succeed on the merits of his appeal. He will not be irreparably injured absent a stay. The stay will not injure the government. The public interest is unaffected by the granting, or denial, of a stay.

Accordingly,

IT IS ORDERED:

1. The Defendant's motion for stay of final judgment (Filing No. 78) is denied; and
2. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 19<sup>th</sup> day of September, 2012.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge